

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA**

DAVID J. NELSON,	)	
	)	
Plaintiff,	)	
v.	)	No. 1:11-mc-12-TWP-TAB
	)	
ROBERT DAVID NEAL,	)	
	)	
Defendant.	)	
	)	

**Entry and Notice**

**I.**

David Nelson, referring to himself as the Plaintiff/Judgment Creditor, seeks reconsideration of the denial of his claim for withdrawal. That ruling was made on April 6, 2011, in the following context:

- The papers submitted by Mr. Nelson sought the production of a prisoner confined in this District. Because of this specific form of relief which was sought, the papers were treated as a petition for writ of habeas corpus and they were re-docketed as No. 1:11-cv-415-TWP-TAB, with the inmate's custodian substituted as the respondent. Mr. Nelson's requests for a finding of contempt were denied. Further details concerning this are set forth in the Entry of March 24, 2011.
- Concurrent with directing the matters described above, Part I of the court's Entry of April 6, 2011, in this action stated: "The motion for contempt (Dkt. No. 3) and the motion for contempt (Dkt. No. 5) are each **denied**. Any ancillary or other relief sought through the registration of the California

judgment is also **denied**. The relief to which a party may be entitled will be determined and awarded as a result of the proceedings to be undertaken pursuant to the directions in Part III of this Entry.”

- An ostensible confession of judgment was then submitted by Mr. Nelson on March 30, 2011, followed by his claim for withdrawal of his petition for contempt, his petition for contempt of U. S. Marshal, and his confessed judgment. Because these matters had already been addressed in the Entry of March 24, 2011, the relief sought in the stipulation for confessed judgment and the claim for withdrawal of the initiating documents was denied.

Mr. Nelson has now, as indicated, filed a motion to reconsider (Dkt. No. 14) the ruling to which this Entry has just referred. He has also filed a *petition for a writ of mandamus* (Dkt. No. 12) and a *motion for a writ of mandamus* (Dkt. No. 15).

## II.

Mr. Nelson suggests in his motion for reconsideration that the court's action has not been in conformity with the procedures approved with qualifications in *Castro v. United States*, 540 U.S. 375 (2003), and *Glaus v. Anderson*, 408 F.3d 382, 389 (7th Cir. 2005). Specifically, he notes that the recharacterization of the initiating papers in this action occurred without prior notice to him or notice of the consequences.

“Federal courts sometimes will ignore the legal label that a pro se litigant attaches to a motion and recharacterize the motion in order to place it within a different legal category.” *Castro*, 540 U.S. at 381. The treatment of the initiating papers was appropriate. The treatment of the initiating papers was explained. Any further development and modification of the claim seemingly asserted in the initiating papers will occur in No. 1:11-

cv-415-TWP-TAB, as Mr. Nelson has been made aware. Mr. Nelson has not identified any prejudice or confusion which he has suffered as a result of the ruling of March 24, 2011. The relief sought in the motion for reconsideration, moreover, is that the court permit the withdrawal of documents he acknowledges that he filed. Taken literally, this is not relief which could be granted—he does not seek to amend what he presented, but to withdraw what he presented. Taken in the spirit seemingly offered, this is not relief which should be granted, although he need only recall that any relief which is appropriate will be discussed in the new action, No. 1:11-cv-415-TWP-TAB.

Based on the foregoing, therefore, Mr. Nelson's motion for reconsideration (Dkt. No. 14) is **denied**.

### III.

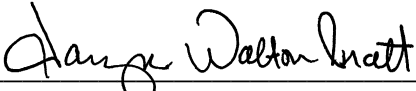
The *petition for a writ of mandamus* (Dkt. No. 12) is being addressed through a separate written ruling issued this date.

The *motion for a writ of mandamus* (Dkt. No. 15) is a copy of a filing with the Court of Appeals, which has docketed the item as No. 11-1923. The *motion for a writ of mandamus* (Dkt. No. 15) seeks no relief from this court, but is **denied as duplicative** of the relief sought in the *petition for a writ of mandamus* insofar as it could be understood as seeking relief here.

**IT IS SO ORDERED.**

Date: 04/26/2011

Distribution attached.

  
\_\_\_\_\_  
Hon. Tanya Walton Pratt, Judge  
United States District Court  
Southern District of Indiana

Distribution:

David J. Nelson  
No. 15151-180  
United States Penitentiary  
P.O. Box 33  
Terre Haute, IN 47808

Robert David Neal  
No. 15151-180  
United States Penitentiary  
P.O. Box 33  
Terre Haute, IN 47808

Robert David Neal  
4005 Manzanita Ave.  
Suite 6-434  
Carmichael, CA 95608